

ORDINANCE NO. 7,650-N.S.

ADDING CHAPTER 13.104 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A SANCTUARY CONTRACTING ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 13.104 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.104

SANCTUARY CITY CONTRACTING

Sections:

- 13.104.010 Title.
- 13.104.020 Definitions.
- 13.104.030 Prohibition on Use of City Resources.
- 13.104.040 Investigation and Reporting.
- 13.104.050 Enforcement.
- 13.104.060 Severability.
- 13.104.070 Construction.
- 13.104.080 Chapter Supersedes Existing Law and Regulations.
- 13.104.090 Effective Date.

13.104.010 Title.

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

13.104.020 Definitions.

- A. "City" means the City of Berkeley, California.
- B. "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
 - 1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
 - 2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- C. "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.

Extreme Vetting Does not include the following:

 - 1. The City's computer-network health and performance tools;
 - 2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and

cyber-forensic based investigations and prosecutions of illegal computer based activity.

D. "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.

E. "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

13.104.030 Prohibition on Use of City Resources.

A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives.

The following processes shall be followed in considering a waiver: The City Manager or designee shall file a waiver request. The Council shall make the final decision on granting the waiver.

B. All public works, construction bids, requests for information, requests for proposals or any other solicitation issued by the City shall include notice of the prohibition listed above.

C. For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:

1. Information available on federal contracting websites, or in the absence of those, another common source of federal data;
2. A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE.

D. Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this Section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) business days of notification, or seven (7) business days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) business days of the determination.

13.104.040 Investigation and Reporting.

A. The City Manager, or their designee, shall review compliance with Section 13.104.030. The City Manager may initiate and shall receive complains regarding violations of Section 13.104.030. All officers, employees, departments, boards,

commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Section 13.104.030.

B. By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 13.104.030 over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section 13.104.030, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

13.104.050 Enforcement.

A. Right to Cure. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

B. Cause of Action. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court competent jurisdiction to enforce this Ordinance.

C. Civil Penalties. If the City is found liable in a cause of action brought by an individual under subsection B. above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.

D. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection B. reasonable attorney's fees and costs in an amount not to exceed \$15,000.

E. Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.

F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.104.030C.2., shall be guilty of a misdemeanor and up to a \$1,000 fine.

13.104.060 Severability.

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

13.104.070 Construction.

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

13.104.080 Chapter Supersedes Existing Law and Regulations.

The provisions of this chapter shall supersede any conflicting law or regulations.

13.104.090 Effective Date.

This Ordinance shall take effect on July 1, 2019.

At a regular meeting of the Council of the City of Berkeley held on April 23, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.